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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

NO. _____

AMERICAN TRANSFER AND
STORAGE COMPANY,
Petitioner

v.

RAYMOND J. BROWN,
Respondent

BRIEF OF AMICUS CURIAE MAYFLOWER WAREHOUSEMEN'S ASSOCIATION IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

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STATEMENT OF INTEREST OF MAYFLOWER WAREHOUSEMEN'S ASSOCIATION, INC. IN THE OUTCOME OF THIS CASE

Mayflower Warehousemen's Association, Inc. (MWA) is a voluntary association consisting exclusively of the franchised agents of the Aero Mayflower Transit Company, Inc. MWA is an Indiana not-for-profit corporation originally chartered by the State of Indiana on February

6, 1935. MWA's principal and only office is located at 9247 North Meridian Street, Suite 120, Indianapolis, Indiana 42620.

Each member-agent of MWA is an independent business franchised by the Aero Mayflower Transit Company, Inc. of Indianapolis, Indiana. Most of the MWA membership consists of small, family-owned companies having only one location. These member-agents, however, represent Aero Mayflower Transit Company, Inc. in every state of the United States and, in 1978, generated sales in excess of $160 million.

Because each of its member-agents operates as agent of an interstate carrier, MWA has a great deal of concern over the Texas Supreme Court decision in this case. In spite of a comprehensive federal scheme regulating interstate carriers, MWA's member-agents now find themselves potentially liable under state law for damages to shipments. MWA has an interest in maintaining a uniform system of law dealing with claims of this type.

POINT OF ERROR

BECAUSE FEDERAL LAW PREEMPTS ANY STATE CAUSE OF ACTION REGARDING GOODS DAMAGED IN INTERSTATE COMMERCE, THE TEXAS SUPREME COURT ERRED WHEN IT APPLIED THE TEXAS DECEPTIVE TRADE PRACTICES ACT TO THE FACTS OF THIS CASE.

SUMMARY OF THE ARGUMENT

The writ should be granted because the decision of the Texas Supreme Court is contrary to settled principles

of the federal preemption doctrine. The decision must be reversed to preserve a uniform federal rule of liability for damages to interstate shipments. Maintenance of such a rule is one of the purposes of the Carmack Amendment. Permitting a shipper to recover treble damages and attorney fees under the Texas Deceptive Trade Practices —Consumer Protection Act (DTPA) when the shipper's sole injury is damage to an interstate shipment frustrates that purpose of the Carmack Amendment. Although Respondent characterized his lawsuit as one under the state deceptive trade practices law, it was in substance an action to recover for damages to an interstate shipment. Federal decisions have established that federal law governs the entire relationship between carrier and shipper, and more specifically that a carrier's liability is governed by federal law even when the carrier has misrepresented its services to the shipper. The decision of the Texas Supreme Court is contrary to these federal decisions. Moreover, the authority relied on by the Texas Supreme Court does not support its decision. Accordingly, the writ should be granted.

ARGUMENT AND AUTHORITIES UNDER POINT OF ERROR

A single, uniform federal rule governing an interstate carrier's liability for damages to shipped goods is essential to the proper operation of the federal regulatory scheme that provides uniform rate schedules for all shippers in interstate commerce. A carrier's exposure to liability for damages is one aspect of its cost of operation, and by the provisions of the Carmack Amendment, 49 U.S.C. § 20(11), Congress has established precisely how and to what extent a carrier is liable for damages "caused by

it." The Carmack Amendment permits a carrier to *limit* its liability in some circumstances to the value of the shipment as declared by the shipper, but in *no* circumstance can the carrier be liable in an amount *greater* than the actual loss, damage, or injury to the goods shipped. The ruling of the Texas Supreme Court, however, exposes a carrier to liability for three times the actual damage to the property and for attorney fees. This exposure is based on state law, and if the ruling is permitted to stand, carriers and shippers alike will be deprived of the uniformity that federal regulation of interstate carriage of goods is intended to provide.

The question is whether the federal legislation preempts the state legislation. The Texas Supreme Court erroneously concluded that the state legislation, the Texas Deceptive Trade Practices—Consumer Protection Act (DTPA), Tex. Bus. & Com. Code Ann., tit. 2, § 17.46, is not preempted. The court's error was predicated on a mistaken view of the applicable law concerning preemption. The Texas Supreme Court insisted that the state legislation is not preempted, obviously focusing on the different *purposes* of the two statutes:

> [T]he Carmack Amendment applie[s] only to the liability of a carrier for its breach of contract, and the DTPA [is] a general statute, which provide[s] remedies for persons victimized by false, misleading and deceptive acts within the police power of the state. Thus, . . . the prime object of the Carmack Amendment [is] to create a uniform rule of responsibility for interstate commerce and interstate commerce bills of lading, and . . . a DTPA suit for misrepresentation made prior to contract does not fall within the ambit of federal regulations.

Brown v. American Transfer & Storage Co., 601 S.W. 2d 931, 938 (Tex. 1980).

As this Court made clear in *Perez v. Campbell*, 402 U.S. 645, 649-52 (1971), the test of preemption is not whether the purpose of the state law is different from the purpose of the federal law. Rather, the test is whether the state legislation "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941), *quoted in Perez v. Campbell*, 402 U.S. 645, 649 (1971). The purpose of the federal legislation is of paramount importance. If the operation of a state law in a particular case interferes with or otherwise impedes the full achievement of that purpose, the state law must yield even though it was enacted to address an entirely separate evil. Just such a situation is presented here. Although the purpose of the DTPA—to protect consumers from deceptive trade practices—is different from the objective of the Carmack Amendment, the practical effect of permitting a DTPA recovery from the carrier in this case is to increase substantially the carrier's liability for goods damaged in transit. It should be obvious that this result impedes the full accomplishment of the Carmack Amendment's objective of establishing "a uniform rule of responsibility as to interstate commerce and interstate commerce bills of lading." *Atchinson, T. & S.F. Ry. v. Harold*, 241 U.S. 371 (1916).

The Texas Supreme Court perceived a distinction between an action under the DTPA to recover for damages to goods caused by a carrier's misrepresentations and one brought pursuant to the Carmack Amendment to recover damages for the same actual injury, but based upon the

carrier's responsibility under the bill of lading. The authorities discussed above make it clear, however, that the fact that the two statutes seek to remedy distinguishable wrongs is irrelevant to the preemption question. The focus of the preemption inquiry is whether the state legislation obstructs the achievement of the purpose of the federal legislation. The proper inquiry in this case is whether a uniform rule of liability regarding damage to interstate shipments under a bill of lading can coexist with a state statute that permits recovery of three times the maximum damages recoverable under the federal statute when (1) the carrier misrepresents the service to be provided under the bill of lading *and* (2) the shipment is damaged in transit. MWA submits that the federal purpose cannot be effectuated if a shipper can recover under the terms of the state statute in these circumstances.

The distinction between the federal statute and the state statute perceived by the Texas Supreme Court simply does not speak to the issue of preemption. First, on the facts of this case it is a distinction without a difference. The misrepresentations complained of concern the manner in which the contract was to be performed. In essence, no matter how characterized respondent's complaint is and always has been that the failure to perform the contract as represented resulted in damage to his property. Respondent's claim is therefore essentially one for a breach of contract. Second, even assuming the misrepresentations in this case can be distinguished from the contract for interstate shipment, federal decisions indicate that the Carmack Amendment governs the *entire* relationship between shipper and carrier with respect to liability for damaged shipments. Third, and more specifically, federal courts have already been presented with

lawsuits alleging that a shipper was induced to contract with a carrier by the carrier's misrepresentations and have uniformly held that *federal* law governs the carrier's liability for damaged shipments.

1. The misrepresentations complained of by respondent concern the manner in which petitioner would perform the contract, such as how respondent's goods would be packed and transported. Under the DTPA, these representations, even if false, were not actionable until petitioner's failure to honor them caused respondent some actual damage. Tex. Bus. & Com. Code Ann., tit. 2, § 17.50(a). Respondent was not damaged until the carrier failed to deliver the goods as promised. In other words, respondent had no cause of action under state law until he had the cause of action under the Carmack Amendment. To draw a distinction between the two is to exalt form over substance, and in doing so to destroy the uniformity of the Carmack Amendment's liability provisions. Hereafter, a shipper from Texas who can show that the carrier's representations concerning the manner in which the goods would be shipped were not accurate can recover treble damages under state law, notwithstanding that the shipper's only injury is the damage to his goods in shipment, which is precisely the injury that the Carmack Amendment was intended to regulate.

2. Even if the misrepresentations are considered apart from the contract to which they referred, the courts have already held that the Carmack Amendment was intended to regulate the *entire* relationship between shipper and carrier and not merely the carrier's responsibility while the goods are actually being moved. As the court said in

Sylgab Steel & Wire v. Strickland Transportation Co., 270 F.Supp. 264 (E.D. N.Y. 1967):

> State and federal courts have properly been reluctant to divide the relationship between interstate carriers and shippers into discrete parts, some governed by federal and some by state law. . . . The courts tend to view events in interstate commerce as part of a total transaction which extends beyond the actual movement across state lines.

270 F. Supp. at 270.

The misrepresentations complained of in this case were certainly part of the relationship between the shipper and the carrier. Moreover, according to respondent's own theory of the case, the representations were intimately connected with the contract for the interstate shipment, since respondent claimed that the carrier's misrepresentations induced him to contract. 601 S.W.2d at 931. In *Sylgab,* the plaintiff wanted to maintain his action in a state court, and in order to do so argued that the lawsuit arose out of a post-delivery agreement to repair between the shipper and the carrier. The plaintiff suggested that federal law covered "only those matters specifically dealt with in the Carmack amendment—limitations on liability and responsibility of originating carrier for connecting carrier delicts—and not all aspects of liability for damage to goods carried under an interstate bill of lading." 270 F. Supp. at 267. The court rejected this argument, holding that when the asserted basis of the lawsuit.

> is so closely connected to the agreement embodied in the bill of lading as to constitute at most a clarification or modification of that agreement it is governed by federal law. The federal pre-emptive tent

> over the main attraction, the bill of lading, covers what is essentially a side-show, the agreement by the carrier to repair.

Id. at 270.

To permit respondent in this case to separate artificially the representations made concerning the contract from the contract itself will engender a disastrous balkanization of the substantive law governing carrier liability to shippers. There will no longer be one rule of liability governing the entire relationship of carrier and shipper, but several: the federal rule will be narrowly confined to actual interstate events whenever a state law permits a more liberal recovery for the same damage based on a different cause of action. Such a result is totally contrary to the purpose of the Carmack Amendment, and poses a severe threat to the federal policy of imposing a uniform rule of liability on such shipments.

3. The federal courts have decided that even when a shipper is induced to contract with an interstate carrier by the carrier's fraud or misrepresentation, the shipper's recovery is governed by federal law—specifically, the measure of recovery permitted by the Carmack Amendment. In *Mitchell v. Union Pacific R. Co.*, 188 F. Supp. 869 (S.D. Cal. 1960), a shipper sued to recover the actual value of his pet dog Pudsy, "the wonder dog of Ireland." Mitchell had entered into a contract for interstate shipment of Pudsy by rail, and had declared the animal's value to be $25. The dog died in transit due in part to the railroad's negligence. Mitchell sued to recover the full value of the dog, and the railroad defended on the ground that the value declaration and tariff provisions limited the carrier's liability to the declared value

of $25. The jury found that the railroad had induced the plaintiff to enter into the contract through fraud, and the court held that the railroad's fraud "vitiated the value declaration and the tariff provisions which would limit the liability." 188 F. Supp. at 874. The court determined however, that the plaintiff's right to recover the actual damages was still governed by federal, not state, law. *Id.* at 871-72. Significantly, the misrepresentations at issue in *Mitchell* concerned the manner in which Pudsy would be transported by the carrier, precisely the kind of misrepresentation at issue in this case.

Similarly, in *Paine-Henderson v. Eastern Greyhound Lines, Inc.*, 320 F. Supp. 1138 (D.S.C. 1970), the defendant bus line lost the plaintiff's luggage, which contained the only copies of two manuscripts written by the plaintiff. The plaintiff based his action on a theory of fraud, alleging that the ticket agent represented the bus as a through bus to Washington, D.C., when it was not; and alleging that the plaintiff would not have boarded the bus if he had known it was not a through bus. The defendant moved for a summary judgment that its liability was limited to $50, in accordance with the limitation of liability contained in its tariff as permitted by the Carmack Amendment. The court denied the motion, holding that if the plaintiff could prove that the carrier's misrepresentations induced him to enter into the contract for carriage, the plaintiff could avoid the limitation of liability contained in the tariff and sue for the actual value of the items lost. The court insisted, however, that since "the transaction involved was in interstate commerce, . . . *federal law applies to all phases of the case.*" 320 F. Supp. at 1139. (emphasis added).

The case of *Chandler v. Aero Mayflower Transit Co.*, 374 F.2d 129 (4th Cir. 1967), illustrates precisely the inequity that will result if the decision of the Texas Supreme Court in this case is permitted to stand. In *Chandler*, the plaintiff shipper alleged that his signatures on a bill of lading and an order for services, both of which contained a limitation of liability, were obtained by fraudulent misrepresentations. When his household goods were destroyed in transit by fire, he sued to recover their full value. The district court granted the carrier's motion for a directed verdict that the shipper recover only the released value of the goods, and the Fourth Circuit reversed. The court first determined that the action was *not* governed by the legal effect of the bill of lading, because the bill of lading had not been delivered to the shipper. 374 F.2d at 134. Rather than look to state law, however, the Fourth Circuit said "[t]he resolution of this controversy . . . is grounded ultimately in federal statutory law and specifically in the terms of [the Carmack Amendment,] 49 USC. § 20(11)." *Id.*

In the instant case, the Texas Supreme Court held that even though there was a bill of lading, the controversy was controlled by state law because respondent grounded his action on misrepresentations made prior to the contract for carriage. Yet precisely the same kind of factual circumstances were present in *Chandler*. The Fourth Circuit noted that an employee of the carrier's agent "admitted that in discussing the carrier's services with the shipper he misinformed and mislead him into possibly believing that the [limitation of liability] did not apply to recovery for damages or loss of property caused by the fault or negligence of the carrier." *Id.* at 133 (footnote omitted). This misrepresentation, made

before the shipper entered into any agreement with the carrier, would form the basis of a cause of action under the provision of the DTPA that proscribes representations "that an agreement confers or involves rights, remedies, or obligations which it does not have or involve. . . ." Texas Bus. & Com. Code Ann., tit. 2, § 17.46(b)(12). Under the Fourth Circuit's view of the law, however, the shipper's rights were governed entirely by the Carmack Amendment, even in the absence of a bill of lading and even given fraudulent misrepresentations made prior to any agreement between the shipper and the carrier. Were the case to arise today in Texas, however, the Texas Supreme Court's ruling in the case presented for review would permit the shipper to avoid federal law by characterizing his action as one governed by state law because it arose from misrepresentations made prior to the contract. The inequity engendered by this ruling is highlighted by the Fourth Circuit's flat statement in *Chandler* that "the plaintiff shipper is not entitled in this action to recover from the carrier punitive damages. *See* 49 U.S.C. § 20(11). . . ." *Id.* at 137 (citing cases). It is clear from the cases cited by the Fourth Circuit that, in the event the shipper proved at trial that he had been deceived by the carrier's misrepresentations, the carrier's liability would be confined to the *actual damage* to the shipment. Respondent in this case, however, has been permitted to recover three times his actual damages. Thus, the evil of the Texas Supreme Court's ruling is not only that it upsets the design of the Carmack Amendment to provide a uniform rule of responsibility upon which carriers can depend; the ruling also results in widely disparate treatment of shippers who use interstate carriers. Clearly, then, the Texas Supreme Court's ruling

stands as an obstacle to the full achievement of the purpose of the Carmack Amendment "to impose a single uniform federal rule upon the obligations of carriers operating in interstate commerce." *Rocky Ford Moving Vans, Inc. v. United States,* 501 F.2d 1369 (8th Cir. 1974).

Last, it should be noted that none of the authorities relied on by either the Texas Court of Civil Appeals or the Texas Supreme Court support respondent's position. In *Huron Portland Cement Co. v. City of Detroit,* 362 U.S. 440 (1960), relied on by the Court of Civil Appeals, this Court upheld a local ordinance primarily because that ordinance sought to regulate pollution from steamship boilers. "The Ordinance was an act for the manifest purpose of promoting the health and welfare of the City's inhabitants," *id.* at 442, which, unlike the regulation of deceptive trade practices, clearly falls within the most traditional concept of police power, *Jacobson v. Massachusetts,* 197 U.S. 11 (1905). In the other case relied on by the Court of Civil Appeals, *Askew v. American Waterways Operators, Inc.,* 411 U.S. 325 (1973), the federal statute expressly provided, "nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such State." *Id.* at 329. Moreover, the federal statute provided merely for the recovery by the United States of its costs for cleaning up oil spills; the Supreme Court found no obstacle to a state's recovering its own cleanup costs or to a private party's recovering its damages. Far from burdening the operation of the federal statute, the state statute complemented and extended federal law. By contrast, the application of the

DTPA would contravene the very purpose behind the Carmack Amendment, namely, providing uniform regulation of interstate carriers.

The Texas Supreme Court cited only *Florida Lime & Avocado Growers v. Paul,* 373 U.S. 132 (1963), in its opinion on this point. The crucial distinction between that case and this one is that in *Florida Lime & Avocado Growers* the federal law in issue was intended to establish *minimum standards* applicable to the commerce regulated. 373 U.S. at 138. This Court determined that there was no collision between federal regulations prescribing minimum standards for goods entering the stream of commerce and more demanding state standards for the same goods when marketed within the state. *Id.* at 141-47. Since the promulgation of minimum standards constituted only "partial congressional superintendence of the field," *id.* at 145, there was room for state superintendence of a more exacting sort. The Court noted, however, that if the federal legislation established a *maximum* standard, a state regulation requiring more would inevitably conflict with the state law. *Id.* at 143. In the instant case, Congress has established a rule governing the entire liability relationship of carrier and shipper. Any state law that increases or decreases the liability of a carrier for covered shipments strikes at the very core of that legislation, and must yield under preemption principles to the federal legislation.

CONCLUSION

The decision of the Texas Supreme Court is contrary to fundamental principles of the federal preemption doctrine and contrary to federal decisions construing the

scope and effect of the Carmack Amendment. A uniform federal rule regarding liability for damaged interstate shipments is essential to the proper operation of federal regulation of interstate freight shipments. The decision of the Texas Supreme Court destroys that uniformity. Accordingly, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Texas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the _____ day of November, 1980, a true and correct copy of the above and foregoing brief has been sent to:

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_____